

Coal Development Regulatory Overview

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Introduction (Both BLM and U.S. Forest Service Lands)

Except for the land use planning process which is guided by the National Forest Management Act (NFMA) and only applies to National Forests, the process for leasing and developing coal on U.S. Forest Service (FS) lands follows the procedures for coal leasing on Bureau of Land Management (BLM) lands.

Statutes

Organic Administration Act of 1897, 16 U.S.C. § 551: Authorizes the Secretary of Agriculture to make rules and regulations as are needed to govern the use and occupancy of the National Forests.

National Forest Management Act of 1976 (NFMA), 16 U.S.C. §1600 et seq.: Requires the USFS to prepare a forest plan for each national forest.

Mineral Leasing Act of 1920 (MLA), 30 U.S.C. §§ 181-287: Authorizes the Secretary of the Interior to issue leases for leasable minerals on Federal public domain lands, except in national parks.

Federal Coal Leasing Amendments Act of 1976, Pub. L. 94-377, 90 Stat. 1083-1092: Amended the MLA by requiring, among other things:

- The offering of coal leases by competitive bidding based on fair market value.
- The review by the state governor of proposed leases within USFS lands.
- Compatibility of lease sales with applicable comprehensive land-use plans that assess the coal deposits and deep mining/surface mining scenarios.
- Issuance of leases only with the consent of the applicable Federal land managing agency and

upon its prescribed protective conditions.
• Exploration licenses to contain conditions for protecting the environment.

Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. §§ 351-359: Allows the leasing of coal on Federally-acquired lands, except for national parks, but only with the consent of the land managing agency with jurisdiction over those lands.

National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq.: Mandates that federal agencies assess the environmental effects of a proposed action and engage the public in the analyses of environmental impacts before agencies make decisions affecting the human environment.

Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§ 1201-1328: Requires operators on Federal and nonfederal lands to apply for and obtain a permit from the Office of Surface Mining (OSM), or from an OSM-approved State program, before conducting surface coal mining operations or underground operations that impact the surface. Requires States and Federal agencies to designate the lands that are unsuitable for surface coal mining.

Regulations

(1) Planning
Federal-State coal team, 43 C.F.R. § 3400.4: Establishes a BLM-State team to guide the coal activity planning process. Other Federal agencies, including those who manage lands potentially affected by coal management decisions, may participate in this team.

FS comprehensive planning process, 36 C.F.R. §§ 219.3 through 219.18: Explains the FS's planning process, including opportunities for public and other agency comment.

BLM comprehensive planning process, 43 C.F.R. §§ 1610.2, 1610.7-1, and § 3461.1: Provides for public participation in BLM resource management planning process. These plans designate which public lands are deemed unsuitable for some or all types of surface coal mining operations.

Comprehensive land use plan required prior to lease sales, 43 C.F.R. § 3420.1-4 through § 3420.1-8: Precludes BLM from holding a lease sale if the lands contemplated

Regulations (continued)

for leasing have not been the subject of comprehensive land use plan or analysis that has identified both unsuitable and acceptable coal mining lands. All lease sales must be compatible with these plans.

Protection of NPS Units, 43 C.F.R. § 3420.1-4(e)(3): Provides a means for eliminating lands from further consideration for coal leasing due to impacts to units of the National Park System.

Federal lands unsuitable for surface coal mining operations, 43 C.F.R. § 3461.1: Provides that Federal lands are unsuitable for surface coal mining unless the surface management agency finds that an exemption or exception applies.

Public participation in unsuitability decisions, 43 C.F.R. § 3461.2-1(2): Solicits public comments on the application of unsuitability criteria.

Consultation with other agencies, 43 C.F.R. § 3420.1-6: Requires BLM to consult, during the planning process, with other Federal surface management agencies whose lands are being considered for leasing, in order to ensure that such consideration is acceptable. Also requires BLM to consult with other Federal agencies whose lands would be impacted by coal development on BLM lands, in order to jointly determine whether the BLM lands should be further considered for leasing.

Public participation, 43 C.F.R. §§ 3420.3-1(d), 3420.3-4(a)(1), and 3420.3-4(c): Sets forth different points in the coal leasing process for public participation, provides 30-day public comment period on coal lease tract delineation, and provides for the development of an EIS on a proposed coal lease sale. The development of an EIS has inherent public participation provisions.

(2) Leasing

Lands subject to coal leasing, 43 C.F.R. § 3400.2: Authorizes BLM to issue coal leases on all Federal lands except NPS lands, wilderness, Wild and Scenic Rivers, national trails and wildlife refuges, and others.

NEPA required prior to issuing exploration licenses, 43 C.F.R. § 3410.2-2: Requires BLM to prepare an EA or an EIS before issuing a license to explore for coal deposits. License must contain conditions prescribed by the

surface managing agency, such as the FS. A license may not be issued if the exploration would cause significant and lasting degradation, jeopardize the continued existence of a threatened or endangered species, or adversely modify critical habitat.

Consent of surface managing agency, 43 C.F.R. §§ 3400.3-1, 3420.4-2: Requires the BLM to obtain the consent of the surface managing agency, such as the FS, to the issuance of a lease and to impose on the lessee the terms and conditions prescribed by the surface managing agency.

USFS acceptability assessment required for surface mining, 43 C.F.R. § 3400.3-3: Requires that the tracts for coal leases in FS lands be assessed and deemed acceptable for certain methods of surface mining operations before the BLM can issue the lease.

The leasing process, 43 C.F.R. §§ 3420.3 through 3420.3-4: Describes the BLM's processes for identifying, ranking, analyzing, selecting, and scheduling lease tracts upon completion of land use planning. Requires a "regional lease sale" EIS and consultation with other agencies, the state governor, the Attorney General, and Indian tribes.

Lease sales, 43 C.F.R. Subpart 3422: Requires BLM to solicit public comment on the fair market value (FMV) appraisal and the maximum economic recovery of the proposed lease tracts. Prohibits BLM from accepting any bid that is less than FMV.

(3) Development

Procedures and public participation, 43 C.F.R. § 3481.2(a): Requires that all major decisions and determinations are made in writing and made available to the public. If a decision appears to be arbitrary and capricious the public may bring suit under the Administrative Procedures Act. For the NPS, such a decision can be elevated to the attention of the Secretary for redress.